



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA-R09-OAR-2013-0489; FRL-9830-5]

Source Specific Federal Implementation Plan for Implementing
Best Available Retrofit Technology for Four Corners Power Plant;
Navajo Nation; Extension of Notification Deadline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On August 24, 2012, EPA took final action to promulgate a Federal Implementation Plan (FIP) to implement the Best Available Retrofit Technology (BART) requirement of the Regional Haze Rule for the Four Corners Power Plant (FCPP), located on the Navajo Nation. EPA's final action required the owners of FCPP to choose between two strategies for compliance: compliance with the emission limits in EPA's final BART determination; or compliance with an alternative to BART, originally put forth by the owners of FCPP, that included closure of Units 1, 2, and 3 at FCPP and installation of new air pollution controls to meet BART limits on Units 4 and 5. EPA's final action required the owners of FCPP to provide notification to EPA by July 1, 2013, of its selection of which BART compliance strategy it would implement at FCPP. On June 19, 2013, Arizona Public Service (APS), the operator and a co-owner of FCPP, requested that EPA

extend the notification date from July 1 to December 31, 2013, due to new uncertainties that complicate its decision related to BART compliance. These uncertainties result from a recent decision by the Arizona Corporation Commission to explore retail competition of the electricity market in Arizona. Because the basis provided by APS for an extended notification date is reasonable and justified given the uncertainties in the electrical market in Arizona, EPA is proposing to extend the date by which APS must notify EPA of its BART compliance strategy, from July 1, 2013 to December 31, 2013. EPA is not proposing to amend any other requirements in the FIP for FCPP.

DATES: Comments must be postmarked no later than [*insert date 30 days from publication in the Federal Register*].

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2013-0489, by one of the following methods:

(1) Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.

(2) E-mail: r9_airplanning@epa.gov.

(3) Mail or deliver: Anita Lee (Air-2), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information

provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in the index, some information may be publicly available only at EPA Region 9 (e.g., maps, voluminous reports, copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Anita Lee, EPA Region 9, (415) 972-3958, r9_airplanning@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we", "us", and "our" refer to EPA.

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I. Background

F CPP is a privately owned and operated coal-fired power plant located on the Navajo Nation Indian Reservation near Farmington, New Mexico. Based on lease agreements signed in 1960, F CPP was constructed and has been operating on real property held in trust by the Federal government for the Navajo Nation. The facility consists of five coal-fired electric utility steam generating units with a total capacity of 2060 megawatts (MW). Units 1, 2, and 3 at F CPP are owned entirely by Arizona Public Service (APS) which serves as the facility operator, and are rated to 170 MW (Units 1 and 2) and 220 MW (Unit 3). Units 4 and 5 are each rated to a capacity of 750 MW, and are co-owned by six entities: Southern California Edison (48 percent), APS (15 percent), Public Service Company of New Mexico (13 percent), Salt River Project (10 percent), El Paso Electric Company (7 percent), and Tucson Electric Power (7 percent).

On August 24, 2012, EPA promulgated a final rule that established limits for oxides of nitrogen (NO_x) emissions from FCPP under the BART provision of the Regional Haze Rule (77 FR 51620). The final rule required the owners of FCPP to choose between two strategies for BART compliance: (1) compliance with a plant-wide BART emission limit of 0.11 pounds of NO_x per million British Thermal Units of heat input (lb/MMBtu) by October 23, 2017, or (2) retirement of Units 1, 2, and 3 by January 1, 2014 and compliance with a BART emission limit of 0.098 lb/MMBtu on Units 4 and 5 by July 31, 2018. The second BART compliance strategy, involving retirement of Units 1, 2, and 3, was based on a plan originally put forth by APS. This compliance strategy was proposed and finalized as an alternative emission control strategy that achieved greater reasonable progress than BART. For additional information regarding EPA's analyses regarding BART and the alternative emission control strategy, see EPA's BART proposal (75 FR 64221, October 29, 2010), supplemental proposal (76 FR 10530, February 25, 2011) and final rule (77 FR 51620, August 24, 2012).

As discussed in our supplemental proposal published on February 25, 2011, the choice to retire Units 1, 2, and 3, and comply with BART emission limits on Units 4 and 5 is contingent upon the resolution of several issues, including a renewed site lease with the Navajo Nation, a renewed coal contract, and

regulatory approvals from the Arizona Corporation Commission (ACC), California Public Utilities Commission (CPUC), and Federal Energy Regulatory Commission (FERC). The ACC, CPUC, and FERC regulatory approvals were necessary because APS would purchase the 48 percent interest of Units 4 and 5 currently owned by Southern California Edison (SCE). Because the regulatory approvals, renewed site lease, and renewed coal contract were expected to require significant time and effort by APS, other owners, and the Navajo Nation, EPA's final rule included requirements for the owner or operator of FCPP to (1) update EPA by January 1, 2013, on the status of lease negotiations and regulatory approvals, and (2) notify EPA, by July 1, 2013, of the BART strategy it elects to implement, including a plan and schedule for compliance with its chosen strategy.¹

On December 31, 2012, APS provided an update to EPA regarding the status of the approvals required for implementing the alternative emission control strategy.² APS stated that on March 7, 2011, APS and the Navajo Nation executed an agreement to extend the lease for FCPP to July 6, 2041. The lease renewal must be reviewed and approved by the U.S. Bureau of Indian

¹ See 40 CFR 49.5512(i)(4).

² See Letter from Susan Kidd, Director Environmental Policies and Programs, Arizona Public Service, to Jared Blumenfeld, Regional Administrator, EPA Region 9, dated December 31, 2012.

Affairs, which triggers review under the National Environmental Policy Act (NEPA), and other related reviews, including under Section 7 of the Endangered Species Act. NEPA review is underway and expected to conclude in time to allow for a Record of Decision by January 2015. EPA is a cooperating agency in the NEPA process. In its December 31, 2012 update letter, APS also stated that it is in on-going negotiation for a new coal supply agreement with its coal supplier. Finally, APS confirmed that it had obtained regulatory approvals to purchase SCE's 48 percent interest of Units 4 and 5.³

However, in a letter dated June 19, 2013, APS requested that EPA extend the date by which APS must provide notification of its BART implementation strategy for FCPP.⁴ APS explained that it had previously expected to meet the July 1, 2013 notification date because it had completed the processes to obtain regulatory approvals to purchase SCE's shares of Units 4 and 5, and renewal of the lease and coal contract were underway. Then, unexpectedly, in May 2013, the ACC voted to re-examine

³ APS received approval from the ACC on April 24, 2012; from FERC on November 27, 2012; and from the Department of Justice / Federal Trade Commission on July 2, 2012. As discussed in our final rulemaking dated August 24, 2012, EPA already understood that the CPUC approved the sale of SCE's shares of Units 4 and 5 at FCPP to APS on March 22, 2012.

⁴ See letter from Ann Becker, Vice President, Environmental and Chief Sustainability Officer, Arizona Public Service, to Jared Blumenfeld, Regional Administrator, EPA Region 9, dated June 19, 2013.

deregulation of the retail electric market in Arizona.⁵ In its June 19, 2013 letter, APS explains that, depending on its structure and reach, a deregulated retail electric market could significantly change the BART compliance strategy for FCPP. Thus, APS is no longer able to make an informed decision by July 1, 2013. APS states that its decision requires more certainty regarding the likelihood of deregulation in Arizona. APS also filed a Form 8-K with the United States Securities and Exchange Commission disclosing the uncertainty caused by the ACC decision to examine deregulation.⁶

APS has requested that EPA extend the notification date for its selection of the BART compliance strategy to December 31, 2013. APS noted that the potential for deregulation of the retail electric market in Arizona was not foreseen at the time of our final rulemaking in 2012. APS also noted that extending the notification date by six months will not affect public health or the environment because the BART compliance dates, in 2017 or 2018, depending on the compliance strategy selected, are not linked to the notification date and remain unchanged.

II. EPA's Proposed Action

⁵ <http://www.azcc.gov/Divisions/Administration/About/Letters/5-23-13%20Retail%20Competition%2013-0135.pdf>

⁶ Form 8-K was appended to the June 19, 2013 letter from Ann Becker to Jared Blumenfeld.

EPA is proposing to extend the date by which the owner or operator of FCPP must notify EPA of its selected BART compliance strategy from July 1, 2013 to December 31, 2013. This action proposes to revise one provision in the existing source-specific federal implementation plan for FCPP, codified at 40 CFR 49.5512(i).

A. Justification for Proposing to Extend Notification Date

EPA's final rule required the owner or operator of FCPP to notify EPA by July 1, 2013, regarding whether it would elect to comply with BART or the alternative emission control strategy. Specifically, 40 CFR 49.5512(i)(4) requires the owner and operator of FCPP to provide EPA with updates and additional information regarding the status of various approvals and processes that must be resolved in order for the owner and operator to determine which BART strategy it will implement to comply with the FIP. The notification date is not a substantive requirement of our BART determination, nor is it a requirement related to the emission limit constituting BART or the timeframe for BART compliance, as defined in the CAA or the Regional Haze Rule. EPA notes that the FIP continues to require FCPP to meet the emission limits required under BART or the alternative emission control strategy by the compliance dates specified in our final rulemaking, codified at 40 CFR 49.5512(i)(2) and (3), regardless of the extension of the notification date in (i)(4).

EPA recognizes that the potential re-examination of a competitive retail electric market in Arizona represents new uncertainties for APS and the other owners of FCPP regarding decisions related to the closure of Units 1, 2, and 3, and capital investments to install new air pollution controls to meet BART limits for Units 4 and 5. EPA understands that the ACC has opened a docket to accept comments on deregulation until August 16, 2013, and plans to convene an Open Meeting, after it has reviewed written comments, to discuss issues and information filed to the docket. EPA recognizes that uncertainty may still exist after the Open Meeting, depending on the direction the ACC takes regarding further examination of deregulation. Therefore, EPA is proposing to find that a December 31, 2013 notification date is necessary to provide APS with the needed flexibility in determining whether to implement BART or the alternative emission control strategy to reduce FCPP's NO_x emissions by 80 - 87 percent.

B. Notification Date Extension Does Not Interfere with Attainment or Reasonable Further Progress

The CAA requires that any revision to an implementation plan shall not be approved by the Administrator "if the revision would interfere with any applicable requirement concerning

attainment and reasonable further progress . . . or any other applicable requirement of [the CAA]."⁷

EPA has promulgated health-based standards, known as the national ambient air quality standards (NAAQS), for seven pollutants, including NO₂, a component of NO_x, and pollutants such as ozone and particulate matter with a diameter less than or equal to 2.5 micrometers (PM_{2.5}), that are formed in the atmosphere from reactions between NO_x and other pollutants.⁸ Using a process that considers air quality data and other factors, EPA designates areas as "nonattainment" if those areas cause or contribute to violations of a NAAQS. Reasonable further progress, as defined in section 171 of the CAA, is related to attainment and means "such annual incremental reductions in emissions of the relevant air pollutant . . . for the purpose of ensuring attainment of the applicable [NAAQS]."

FCPP is located on the Navajo Nation, in the northeastern corner of New Mexico. This area is not designated nonattainment with any NAAQS. Regardless of the decision to implement BART or the alternative emission control strategy, emissions of NO_x from FCPP will be reduced as a result of EPA's FIP implementing the BART provisions of the Regional Haze Rule. EPA's proposed extension of the notification date does not affect the

⁷ See section 110(1) of the CAA.

⁸ The other pollutants are sulfur dioxide, carbon monoxide, lead, and PM₁₀.

compliance dates associated with BART or the alternative emission control strategy. Therefore, a six-month extension of the notification date will not interfere with attainment or reasonable further progress for any air quality standard.

C. Notification Date Extension Does Not Interfere with Any Other Applicable Requirement of the CAA

The other requirement of the CAA that is applicable to FCPP is the BART provision under the visibility protection requirements for class I Federal areas under section 169A(b)(2)(A). In our final rulemaking in August 24, 2012, EPA promulgated a finding, under the Tribal Authority Rule (TAR), that it was necessary or appropriate to promulgate a source-specific FIP for FCPP to achieve emission reductions required by the BART provision of the CAA.⁹ As stated previously, the notification requirements included in our final FIP do not affect or change the compliance dates for BART or the alternative emission control strategy. Therefore, the six-month extension of the notification date that we are proposing will not interfere with the BART requirement of the CAA.

III. Administrative Requirements

⁹ See CAA section 169A(b)(2)(A) and our final rulemaking dated August 24, 2012 (77 FR 51620) for additional information related to the TAR. In our FCPP rulemaking, EPA did not propose or finalize a finding that it was necessary or appropriate under the TAR to promulgate a FIP to implement a long-term strategy for making reasonable progress toward the national visibility goal under section 169A(b)(2)(B) of the CAA.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review 13563

This action proposes to extend the date for a single source to notify EPA regarding its decision to implement BART or an alternative emission control strategy. This type of action for a single source is exempt from review under Executive Orders (EO) 12866 (58 FR 51735, October 4, 1993) and EO 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). Because the proposed action merely extends a compliance date, it does not impose an information collection burden and the Paperwork Reduction Act does not apply.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The owners of FCPP are not a small entities. See *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985). Additionally, the extended notification date being proposed today was requested by the operator and co-owner of FCPP. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538, requires Federal agencies, unless

otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule merely proposes a six-month extension of a notification date in an existing federal implementation plan for FCPP. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule does not impose regulatory requirements on any government entity.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or in the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action proposes a six-month extension of a notification date. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this proposed rule may have tribal implications because the Four Corners Power Plant is located on reservation lands of the Navajo Nation. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

EPA consulted with tribal officials early in the process of developing BART regulations for the Four Corners Power Plant to permit them to have meaningful and timely input into its development. During the comment period for prior EPA actions related to the EPA's BART FIP for FCPP, the Navajo Nation raised concerns to EPA about the potential economic impacts of our BART determination on the Navajo Nation. EPA consulted the Navajo Nation regarding these concerns. Additional details of our consultation with the Navajo Nation are provided in sections III.H and IV.F of our final rulemaking published on August 24, 2012 (77 FR 51620). For this proposed action to extend the notification date by six months, we will consult with the Navajo Nation if requested as we proceed with this action. EPA notified the Navajo Nation Environmental Protection Agency regarding the request from APS to extend the notification date on June 25, 2013.

EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This proposed action addresses regional haze and visibility protection.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is exempt under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104-113, 12 (10) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the VCS bodies. The

NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule does not change any applicable emission limit for FCPP. This proposed rule merely extends a notification date by six months.

List of Subjects in 40 CFR Part 49

Environmental protection, Air pollution control, Indians,
Intergovernmental relations, Nitrogen Dioxide.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 25, 2013 Alexis Strauss,
Acting Regional Administrator, Region 9.

For the reasons stated in the preamble, Title 40, chapter I of
the Code of Federal Regulations is proposed to be amended as
follows:

PART 49-- [AMENDED]

1. The authority citation for part 49 continues to read as
follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. In § 49.5512, revise paragraph (i)(4) to read as follows:

**§ 49.5512 Federal Implementation Plan Provisions for Four
Corners Power Plant, Navajo Nation.**

* * * * *

(i) * * *

(4) By January 1, 2013, the owner or operator shall submit a
letter to the Regional Administrator updating EPA of the status

of lease negotiations and regulatory approvals required to comply with paragraph (i)(3) of this section. By December 31, 2013, the owner or operator shall notify the Regional Administrator by letter whether it will comply with paragraph (i)(2) of this section or whether it will comply with paragraph (i)(3) of this section and shall submit a plan and time table for compliance with either paragraph (i)(2) or (3) of this section. The owner or operator shall amend and submit this amended plan to the Regional Administrator as changes occur.

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[FR Doc. 2013-16078 Filed 07/10/2013 at 8:45 am; Publication Date: 07/11/2013]